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January 10, 2005

Federal Trade Commission  
Office of the Secretary  
Room H-159 (Annex K)  
600 Pennsylvania Avenue, NW.  
Washington, DC 20580

Re: Prerecorded Message EBR Telemarketing, Project No. R411001

Verizon<sup>1</sup> hereby responds to the Commission's request for public comment on the letter from Voice Mail Broadcasting Corporation ("VMBC") regarding the rules regulating telemarketing call abandonment. The Commission should modify its rules to track as closely as possible the language employed by the Federal Communications Commission rules, in order to

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<sup>1</sup> The Verizon companies ("Verizon") include local exchange carriers, long distance companies, and Internet services. For purposes of this filing, "Verizon" refers to the Verizon Telephone Companies, which are listed in Attachment A; Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance; NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions; Verizon Select Services Inc.; and Verizon Online-New Jersey LLC, Verizon Internet Services Inc. and GTE.Net LLC d/b/a Verizon Internet Solutions (which operate under the trade name Verizon Online). Some of these companies are carriers, not covered by the Commission's telemarketing rules, but which are subject to the telemarketing regulations of the Federal Communications Commission ("FCC").

“maximize consistency” between the two regimes, as Congress intended.<sup>2</sup> Specifically, the current FTC rules regarding call abandonment – which define a call as “abandoned” when the called party is not connected to a sales representative within two seconds of answering the call – should be amended so as not to prohibit prerecorded message calls, which are not designed to connect to a live representative. Rather, the FTC should instead follow the FCC model, and simply require the prerecorded message to start within two seconds. If necessary to avoid abusive telemarketing practices, it also can require telemarketers who make such calls to state the identity of the calling party, and provide a telephone number the consumer can use to make a do-not-call request.<sup>3</sup> It should specifically allow entities with established business relationships to make such calls.

**Like the FCC, The FTC Should Not Deem Prerecorded Message Calls To Be Abandoned, But Instead Should Ensure That The Messages Begin Promptly, and That Called Parties Are Informed Of How To Make Do-Not-Call Requests**

Currently, the FTC rules define a call as “abandoned” if “a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person’s completed greeting.” 16 C.F.R. § 310.4(b)(1)(iv). The FTC has opined that the use of entirely prerecorded telemarketing messages *per se* violates the call abandonment rule, because

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<sup>2</sup> See Do-Not-Call Implementation Act, Section 3, P.L. 108-10, 117 Stat. 557 (2003) (requiring the FCC to “consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission” and requiring both agencies to file an annual report with Congress outlining inconsistencies and “proposals to remedy any such inconsistencies”).

<sup>3</sup> See 47 C.F.R. § 64.1200(b) (FCC rule regarding artificial or prerecorded messages).

the called party will not be connected to a live sales representative.<sup>4</sup> However, as VMBC points out, the FTC's interpretation of its rules effectively prohibits calls that the FCC deems lawful, and that customers often find helpful. VMBC Letter, at 1-5. The FTC interpretation of its call abandonment rule conflicts with the FCC rules in at least two respects. First, the FCC specifically allows carriers to make prerecorded message calls to persons with whom they have "an established business relationship," without the called party's consent. *See* 47 C.F.R. § 64.1200(a)(2). Second, the FCC rules do not consider prerecorded message calls to be "abandoned" so long as the message starts within two seconds.<sup>5</sup> Rather, the FCC simply requires the caller to identify itself in the message, and provide the called party with information regarding how to request to be placed on the caller's do-not-call list. 47 C.F.R. § 64.1200(b).

In attempting to address the concerns raised by VMBC, the FTC has proposed establishing a "safe harbor," which would allow a seller with an "established business relationship" to the called party to make a prerecorded message call without violating the call abandonment rules if, among other things, within two seconds after the call is answered, the message "Presents an opportunity to assert an entity-specific Do Not Call request . . . at the outset of the message."<sup>6</sup> However, the FTC's proposal conflates several concepts – call abandonment, an "established business relationship" exemption, and providing customers with

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<sup>4</sup> *See Telemarketing Sales Rule*, Notice of Proposed Rulemaking, 69 Fed. Reg. 67287, 67288 (2004) ("Notice"); *see also* Letter from William B. Baker, Wiley Rein & Fielding LLP, to Allen W. Hile, FTC, at 5 (filed Nov. 14, 2003) (quoting FTC's online compliance guide) ("VMBC Letter").

<sup>5</sup> *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, ¶ 156 (2003) ("[P]rerecorded messages sent by companies to customers with whom they have an established business relationship will not be considered 'abandoned' under the revised rules, if they are delivered within two (2) seconds of the person's completed greeting").

<sup>6</sup> *See Notice*, at 67289.

access to avenues to make do-not-call requests – that are separate, and treated separately in the FCC rules. Rather than lumping all of these concepts into one call abandonment rule, and creating a rule that still is in conflict with the FCC, the FTC should adopt rules that track the FCC rules. Specifically, it should:

- **Clarify that when prerecorded messages begin within two seconds, the call is not abandoned.** As VMBC pointed out, the concerns the FTC was attempting to address with the call abandonment rule simply do not apply to calls that consist of entirely prerecorded messages. VMBC Letter, at 6. As the FTC itself explains, “[c]all abandonment” results when companies use “‘predictive dialers’ – telemarketing equipment that increases telemarketers’ productivity by calling multiple consumers for every available sales representative.” *Notice*, at 67287. While such equipment minimizes the time representatives spend waiting to reach prospective customers, it will also result in the dialer reaching more consumers than can be connected to available sales representatives. “In those situations, the dialer will either disconnect the call (resulting in a ‘hang-up’ call) or keep the consumer connected with no one on the other end of the line in case a sales representative becomes available (resulting in ‘dead air’). The call abandonment provision is designed to remedy these abusive practices.” *Id.*

In the case of prerecorded message calls, however, there is no similar danger of hang-up or dead air calls, because the caller does not have to wait to speak to a live representative. There also are no “abusive practices” for the Commission to guard against, because there are no technical or marketing reasons why the prerecorded messages would not start promptly after the caller answered the telephone.<sup>7</sup> Because there is no reason to apply the call abandonment

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<sup>7</sup> See *Notice*, at 67288 (noting that the types of prerecorded message calls described in the VMBC letter would not be likely to raise the concerns that prompted the call abandonment provision).

provision to prerecorded message calls, the Commission could simply clarify that such calls do not fall within the call abandonment provisions of the rule. Alternatively, it could clarify that, if the message starts within two seconds, the call is not abandoned. Such a clarification would make the FTC rules consistent with the FCC call abandonment provisions, in accordance with Congressional intent.

- **Clarify that parties can initiate prerecorded message calls to those with whom they have an “established business relationship,” without the prior consent of the called party.** Currently, the FTC proposes to roll the “established business relationship” exemption into the call abandonment safe harbor. *See Notice*, at 67289. However, as explained above, there normally is no question of “call abandonment” regarding prerecorded message calls. *All* prerecorded message calls should be exempted from the call abandonment requirement, or found compliant if the message starts within two seconds. If the FTC nevertheless believes that, in order to avoid abusive telemarketing practices, there is a separate policy reason why it must nonetheless limit the entities that can make prerecorded telemarketing calls, it should provide such a limitation in a separate provision of the rules. Again, to “maximize consistency” and avoid creating situations where parties governed by FTC rules cannot undertake activities that are lawfully participated in by those governed by the FCC, any new rules should track the FCC provisions as closely as possible. Specifically, like the FCC, the FTC should allow those with an existing business relationship with the customer, as well as nonprofit entities, to conduct telemarketing via prerecorded messages. *See* 47 C.F.R. § 64.1200(a)(2). Because the FTC rules only apply to “abusive telemarketing acts or practices,” 16 C.F.R. § 310.4, prerecorded message calls made for purposes other than telemarketing – such as calls made for emergencies, non-commercial, or non-solicitation purposes – should be outside the scope of the rule, and not

regulated. *See* 47 C.F.R. § 64.1200(a)(2) (FCC rule specifically exempting such calls from limitations on prerecorded messages).

- **Tailor any requirements regarding do-not-call requests to track the FCC**

**rules.** Finally, the *Notice* contemplates that, under the FTC's rules, consumers would be given the ability to "immediately assert" a do-not-call request in a prerecorded message call – for example, by pressing a button during the message in order to speak to a live representative or automated system to make a do-not-call request. *Notice*, at 67289. Again, if the FTC believes it is necessary to adopt regulations regarding customer notification of do-not-call rights in prerecorded messages, any such rule should (a) be separate from a call abandonment provision, and (b) track the FCC rules as closely as possible. As the FTC notes, the FCC rules specify particular content that must be contained in prerecorded messages, including the requirement to "state clearly the telephone number" the customer can use for making do-not-call requests. 47 C.F.R. § 64.1200(b)(2). In order to maximize consistency with the FCC rules, the FTC provisions should parallel the FCC requirements. In particular, the FCC rules require that "during or after the message" the telemarketer give the telephone number where a do-not-call request can be made, rather than (as the FTC proposes) placing a do-not-call request option "at the outset" of the call. *Compare id.* with 69 Fed. Reg. at 67290. Because the FCC rules require other information to be placed "[a]t the beginning of the message," the proposed FTC requirement appears to conflict with the FCC rule.<sup>8</sup>

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<sup>8</sup> *See* 47 C.F.R. § 64.1200(b)(1) (requiring that all prerecorded message calls shall "[a]t the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated. . .").

1/10/2005

In addition, while the FCC rule requires that the customer be given a telephone number for making an opt-out request, the FTC instead proposes an “interactive feature (pressing a button during the message to connect to a sales representative or an automated system to make a Do Not Call request)” as theoretically being “ideal.” *Notice*, at 67289. However, it is not clear that a customer would prefer such a method. He may wish to have a do-not-call request number he can use immediately; however, he may wish to exercise any do-not-call option later, when it is more convenient to do so, or after he has had an opportunity to consult with others in his household about their preferences regarding the receipt of additional telephone solicitations. A requirement for an interactive feature does not expand those options. To the extent a company would include *both* an interactive feature and a do-not-call request number in order to give the customer a choice and satisfy an FTC rule, the end result would be to make the solicitation call longer, which is inconvenient for those customers who do wish to hear the message. Moreover, to the extent the FCC has adopted rules that already have been in place and are familiar to customers, there is no reason (and Congress specifically did not intend) for there to be different regulations in place depending on whether telemarketers are under the jurisdiction of the FTC or FCC.

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For these reasons, Verizon urges the FTC to exempt prerecorded message calls from the call abandonment provisions of its rules, or clarify that the call is not abandoned if the message starts within two seconds. Any new FTC rules should track the Federal Communications Commission rules regarding the regulation of such messages.

Sincerely,

A handwritten signature in black ink, appearing to read "A Rakestraw". The signature is fluid and cursive, with the first letter of the first name being a large capital "A".

Ann H. Rakestraw

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Hawaii Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
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